

T. E. Hamilton, A Sole proprietor, d/b/a Hamilton Halter Company and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Petitioner, Case 7-RC-16762

30 April 1984

DECISION AND DIRECTION

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held 13 October 1982 and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 13 for and 10 against the Petitioner, with 10 challenged ballots.¹

The Board has reviewed the record in light of the exceptions and briefs and has adopted the hearing officer's findings and recommendations only to the extent consistent with this Decision and Direction.

The issue before us is the voting eligibility of employees Ilona Thompson and Mary Lockwood. The hearing officer found that these employees do not share a community of interest with the Employer's production and maintenance employees.² He concluded that Thompson and Lockwood are essentially office clerical employees and therefore recommended that the challenges to their ballots be sustained and that the Petitioner be certified as bargaining representative.

The Employer excepts to the hearing officer's findings and recommendations. The Employer contends that Thompson and Lockwood are plant clerical employees properly included in the unit. For the following reasons we find merit in the Employer's contention.

The Employer is engaged in the manufacture, sale, and distribution of animal halters, collars, and rope products at its Lake Orion, Michigan facility.³

¹ At the hearing the parties agreed that seven challenges should be sustained and the Petitioner agreed to withdraw its challenge to one ballot. The hearing officer considered the remaining two challenges and, on concluding that these two challenges should be sustained, found it unnecessary to open and count the ballot to which the Petitioner withdrew its challenge.

² The parties stipulated to the appropriateness of the following unit: All full-time and regular part-time production and maintenance employees employed by the Employer at its facility located at 3301-A Lappeer Road, Lake Orion, Michigan; but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

³ The facts set forth here are based on the credited testimony. The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118

Thompson and Lockwood are clerical employees at this facility. Each of them has a desk in an enclosed office area adjacent to the production floor. Their primary job responsibility is handling customer orders for the Employer's product. This function includes taking information from customers, generally on the telephone, and transferring this information onto invoices. The invoices are routed through the production shop and returned to the clericals after the order has been filled. The clericals then prepare the necessary billing and shipping statements. A weekly record of these invoices is maintained by the clericals. In addition to order processing, Thompson maintains an inventory of supplies and is responsible for ordering items such as tape and shipping labels. Lockwood is in charge of maintaining an inventory of products sold.

Lockwood and Thompson spend between 70 percent and 95 percent of their working time in their office engaged in the above duties. In the remaining time these employees perform other duties in the production area including filling sample orders for customers. On occasion they assist shop employees loading and unloading trucks. Thompson occasionally contributes to the design and development of new products. Lockwood stamps sizes on the tags of a product for one regular customer.

We recognize that the distinction drawn between office clericals and plant clericals is not always clear. These disputed employees appear to share characteristics of both categories of employees in the variety of duties they perform and in the working conditions they enjoy. On the basis of the record as a whole, however, we find that Lockwood's and Thompson's tasks are more closely akin to those performed by plant clericals than those performed by office clericals. Their primary responsibility is processing customer orders and typing them onto invoice slips. This transcription of sales orders to forms to facilitate production is a function closely associated with production. See *Weyerhaeuser Co.*, 132 NLRB 84 (1961); *Jacob Ash Co.*, 224 NLRB 74 (1976). In addition, Lockwood and Thompson maintain inventories and order supplies, and Thompson collects employees' timecards. These are duties typical of plant clerical workers. See *Magna Corp.*, 261 NLRB 104 (1982). Furthermore, both clericals have assisted shop employees in loading and unloading trucks. The record indicates further involvement in the production process

NLRB 1359, 1361 (1957). We find no basis for reversing the findings. Additionally, the Employer asserts that the hearing officer's findings are the result of bias. After a careful examination of the entire record we are satisfied that this allegation is without merit.

by Thompson's involvement in product design and Lockwood's labeling of certain items.

Based on all these factors we find that Lockwood and Thompson are plant clericals who share a community of interest with the production and maintenance employees. They therefore are included in the bargaining unit. Accordingly, we shall direct that their ballots, and the ballot from which the Petitioner withdrew its challenge,⁴ be opened and counted and that a revised tally of ballots shall issue.

DIRECTION

It is directed that the Regional Director for Region 7 shall, within 10 days from the date of this decision, open and count the ballots of Ilona Thompson, Mary Lockwood, and Nancy Kayne. The Regional Director shall thereafter prepare and cause to be served on the parties a revised tally of ballots and the appropriate certification.

MEMBER ZIMMERMAN, dissenting.

For reasons set forth in the attached excerpts from the hearing officer's report, I would find that employees Thompson and Lockwood are office clericals who lack a sufficient community of interest with the Employer's production and maintenance employees to warrant including all employees in a single unit. Accordingly, I would adopt the hearing officer's recommendation to sustain challenges to the ballots cast by Thompson and Lockwood and to certify the Petitioner's representative status.

⁴ The Petitioner and the Employer agreed that the ballot of Nancy Kayne should be opened and counted. In these circumstances we grant this withdrawal request.

APPENDIX

D. The Issue

As the parties reached agreement on eight of the ten challenges, the sole issue litigated at the hearing was the eligibility of two employees: Mary Lockwood and Ilona Thompson. The Petitioner took the position that Lockwood and Thompson were not eligible voters as they were office clerical employees. The Employer took the position that Lockwood and Thompson were plant clerical employees, properly included in the production and maintenance unit, (the election agreement made no mention of the classification "plant clerical") and therefore eligible to vote.

II. FACTUAL FINDINGS

A. Introduction

Upon the entire record developed at the hearing and from my observation of the witnesses, the following findings of fact are made:

B. The Employer's Business

The Employer is a family run business engaged in the manufacture, sale and distribution of horse, cow, dog and cat halters, collars and rope products at its facility located at 3301-A Lapeer Road, Pontiac, Michigan.

The co-owners of the company, T. E. Hamilton and his wife, Gwendolyn Hamilton, own and operate a separate business in Ferndale, Michigan. The undersigned notes that Pontiac, Michigan is located about 15 miles from Ferndale, Michigan. Some of the business affairs of Hamilton Halter Company, such as financial reports, typesetting and computerized payroll, are conducted at the Ferndale facility.

C. The Managerial Hierarchy

T. E. Hamilton and Gwendolyn Hamilton, as co-owners, are both responsible for the management of Hamilton Halter. However, only Gwendolyn Hamilton spends a significant amount of time at the Pontiac facility, arriving at about 9:30 AM each day and spending an average of eight to ten hours per day there. T. E. Hamilton has no office at the Pontiac facility and is not responsible for the supervising of employees, and, does not, in fact, supervise any of the employees at that facility.

There were in excess of about 25 employees at the Pontiac facility at the time of the election. Notwithstanding, Gwendolyn Hamilton asserted that there were only two supervisors, Marilyn Kondash and Clara Holcomb. The assertion that, though Mrs. Hamilton spends forty to fifty hours per week at the facility but does not supervise any employees, is not credible. Mrs. Hamilton claimed that she spent about 1/2 of her time at the facility in the shop, though another Employer witness, Nancy Kayne, estimated that Mrs. Hamilton spent 85 to 90% of her time in her office. Though neither Ms. Kayne nor Mrs. Hamilton seemed entirely credible during their testimony, Ms. Kayne displayed more self assurance on this point and the undersigned finds that her estimate is closer to an accurate estimation. While in the shop, Mrs. Hamilton testified that, "I wander all over and talk to each and every one to see what they're doing . . . I happen to have a general interest in the total operation . . ." (Tr. 551); "There isn't anybody that works in the entire plant that I have not at one time or another given something to do or asked them to do something . . ." (Tr. 573). This testimony is inconsistent with attempts, throughout her testimony, to disassociate herself with any supervisory authority. At one point, Mrs. Hamilton apparently claimed that she, an owner, had to obtain the approval of supervisory employee Clara Holcomb before exercising certain managerial powers. This assertion is not credible.

The undersigned will delve further into supervisory scope later in this report. However, for the sake of defin-

ing the Employer's hierarchy it is sufficient to note that Mrs. Hamilton acted as the general overseer of the facility and was actively engaged in the supervision of Ilona Thompson and Mary Lockwood, the employees stationed in the office adjacent to hers. Clara Holcomb acted primarily as the supervisor of the sewing and tacking area employees, Marilyn Kondash supervised the cutting department employees and Nancy Kayne acted as a working leader on the afternoon shift. Evidence adduced contrary to these findings was not credible and further illumination on the bases for these findings will be found below.

D. The Layout

Petitioner Exhibit #1, copy attached, was the only sketch of the facility submitted into evidence. There are some inaccuracies in the sketch which were noted during the testimony, but, basically, the sketch presents a fair idea of the layout of the Employer's facility [P. Exh. 1 omitted from publication.]

Holding the sketch so that the words "shelf", "picnic tables", and "garage door" are in a normal reading position, the following notations are made: The sketch is basically divided into three areas—the shipping and receiving area on the left most side of the sketch; the middle section where the office, sewing machines (the nine unlabeled boxes in the middle) and tacking machines are located; and the cutting section on the right most side of the sketch where the break area (where there are picnic tables and a microwave oven) and cutting department are located.

There are partitions with doors between the three main sections of the shop. The sketch shows the location of the restrooms located in the middle and right most sections of the sketch (marked "bathrooms"). There is a third restroom located in the left-most section of the sketch, in the lower left hand corner (marked only "room" on the sketch). In the middle section of the sketch, at the top, there is a depiction of the office area. The office consists of two rooms, one room being the office of co-owner Gwendolyn Hamilton, and the other office containing, *inter alia*, the desks of Ilona Thompson and Mary Lockwood. Both of these rooms have doors leading into the shop which are normally in a closed position so as to reduce the amount of shop noise entering the office area. Outside the office area, a desk and file cabinets are kept. The sketch appears to show a third room attached to the office area, extending over to the partition between the cutting department and the tacking area. Testimony disclosed that no such third room exists and there is an unenclosed area next to the two office rooms.

There is no typewriter in Mrs. Hamilton's office but Ilona Thompson and Mary Lockwood each have a typewriter on their desks. Mrs. Hamilton, Ilona Thompson and Mary Lockwood each have their own telephone and adding machines on their desks. During the testimony, Ilona Thompson and Mary Lockwood attempted to disenfranchise themselves from their desks by asserting that they did not have assigned desks but worked at all three of the desks located in their office. Ilona Thompson claimed that she used all three desks though she later

made references, during her testimony, to "my desk." Mary Lockwood similarly referred to "my table" though further examination revealed that her "table" contained drawers and would be more accurately described as a desk. Throughout their testimony, as this report will detail further, Mrs. Lockwood and Mrs. Thompson were disposed to tailor their responses to favor the Employer's position that they were not office clerical employees. Some of their testimony was inherently improbable and conflicted with that of clearly credible witnesses. Because of their partisanship, lack of candor, and their demeanor on the witness stand, I am constrained to discredit their testimony where it conflicts with that of credible witnesses.

Aside from the two desks located in the office occupied by Mrs. Thompson and Mrs. Lockwood, there is a table and file cabinets containing employee personnel files (with only minimal tax-related items contained therein), customer file folders and invoices. A xerox machine and window air conditioner are located in Mrs. Hamilton's office.

E. Duties

Ilona Thompson began working for the Employer about 6 and 1/2 years ago and Mary Lockwood commenced her employment in January, 1982. Neither knew what their job title was, though Ilona Thompson passed out a card at a trade show in June of 1981 which listed her title as "Manufacturer's Representative." Thompson explained that this card was utilized solely for one trade show and she had not passed it out for any other purpose. Testimony disclosed that the Employer has paid for Thompson's transportation and expenses incurred attending three trade shows in California, Indiana and Illinois during the past several years.

Generally, Mrs. Thompson or Mrs. Lockwood will answer the phone when customers or other outsiders call the facility. Their primary responsibility is the handling of customer orders. Basically, they perform all the paperwork necessary to process orders from start to finish. They obtain the necessary information from the customers and write or type it on an invoice. Copies of the invoice are routed through the shop, and, when the order is filled, the invoice is returned to the office where the information from the shipper is copied onto the order form and the form is filed. Invoices are summarized by Mrs. Thompson and Mrs. Lockwood on a weekly basis.

Mrs. Lockwood and Mrs. Thompson also fill sample orders for customers. These are relatively small orders sent to customers for the purpose of promoting the Employer's products. Further, Mrs. Thompson maintains an inventory of needed supplies and Mrs. Lockwood maintains an inventory of products sold utilizing the invoices processed.

Mrs. Thompson gathers the employee's time cards and calls in the hours to the Ferndale office. When customers visit the facility, she escorts them through the shop. Occasionally, she has signed payroll checks, during the absence of Mrs. Hamilton. She regularly has access to the Employer checkbook (utilized for payment of supplies, not for the payroll) located in Mrs. Hamilton's filing cab-

inet. Both Mrs. Thompson and Mrs. Lockwood operate the xerox, adding machines and typewriters. On rare occasions, they have assisted in the loading of trucks. Mrs. Lockwood stamps the size of a particular product on the product's tag for one particular customer that requires this, and performs this task in her office.

Mrs. Thompson is a horse owner, and, because of her knowledge of horses, sometimes assists in the development and design of certain new products.

F. Percentage of Time in Different Functions

Mrs. Thompson claimed that she spent 50% of her time in the shop. She initially estimated that she spent 6 to 8 hours in the shipping and receiving department but then estimated it to be about 4 to 6 hours per week. She then estimated that she spent about 5% of her time filling sample orders, 15% of her time doing inventories and matters related to inventory, 2 or 3% of her time loading or unloading trucks (after 3:30 PM when the vast majority of the shop employees had left for the day), 5 to 7% of her time typing, 10% of her time on the office phone, and 12 to 14% of her time writing orders. Mary Lockwood estimated that she spent only 25% of her time in the office, 35 to 40% of her time working on samples, about 3 hours/week doing inventory (in the office), about 3 hours/week stamping tags, about 2 or 3 hours per day working on matters related to invoicing, a couple hours per week loading trucks (after 3:30 PM), a couple hours per week closing up orders (after 3:30 PM), a couple hours per week on the phone (90% of this time she is on the office phone) and about 2 or 3 hours per week typing.

The above estimates by Mrs. Thompson and Mrs. Lockwood are largely inaccurate. For instance, Mrs. Hamilton testified that only a few sample orders are sent each day, and, it was not disputed that sample orders are relatively small. Caroline Kobylczak a candid objective witness, credibly estimated that Mrs. Lockwood and Mrs. Thompson spent only about 5 to 10 minutes per day, each, filling sample orders. This estimation is somewhat in line with Mrs. Thompson's estimate that she spends about 5% of her time filling sample orders but is a far cry from Mrs. Lockwood's estimate that she spends 35 to 40% of her time working on sample orders, even in light of the testimony that Mrs. Lockwood spends more time in this task than Mrs. Thompson does. In consideration of all testimony adduced, the undersigned finds that Mrs. Thompson spent considerable less than 5% of her time working on sample orders, and Mrs. Lockwood spend about 5% of her time working on sample orders.

The credibility of Mrs. Thompson's estimates of time spent on different job functions was weakened by her estimation that she spent, after the election, about 1 1/2 to 2 hours per day working with Michael Vossi on new products. Michael Vossi was called as a witness by the Petitioner. He displayed a confident demeanor and air of directness. He testified that Mrs. Thompson asked him to make new product samples, and, he only spent about 1 to 2 hours per week with her. Much of this time was spent in her office. Vossi's estimation is credited. Similarly, though Mrs. Thompson and Mrs. Lockwood asserted that they had assisted in the loading of trucks on a quasi-

regular basis, Vossi credibly testified that though he loaded trucks with two other employees during the post election period (there is only one shipping area at the facility), he never observed Mrs. Thompson nor Mrs. Lockwood loading trucks. In light of this, the fact that Mrs. Thompson and Mrs. Lockwood often wear dress clothes to work (discussed below), and all of the evidence adduced, it is found that Mrs. Thompson and Mrs. Lockwood only rarely, and on an irregular basis, assist in the loading or unloading of trucks.

The estimations concerning the time that Mrs. Thompson and Mrs. Lockwood spent in their office as opposed to time spent in the shop during the period preceding the election, varied widely. Linda Typinski, a credible witness, estimated that they spent about 2 hours per week (or about 5% of their time) outside their office. The Employer's witness, Nancy Kayne, estimated that they spent about 60 to 70% of their time in the office. Priscella Gravin, a generally credible witness, estimated that they spend in excess of 90% of their time in their office. In consideration of all the credible evidence adduced, it is found that the actual time spent in their office as opposed to being in the shop ranged from about 70% to 95%. The majority of their time was spent answering the phone, typing, processing orders and performing inventory and other functions in their office.

G. Supervision

Mrs. Hamilton claimed that Clara Holcomb, the shop supervisor, was responsible for the supervision of about 13 shop employees, plus, Mrs. Thompson and Mrs. Lockwood. In alignment with this assertion, Mrs. Thompson testified that she would first go to Clara Holcomb and ask for time off before asking Mrs. Hamilton for time off. However, Mrs. Thompson did not seem at ease with this testimony, which was somewhat contradictory to her earlier testimony that Mrs. Holcomb was in charge of the *shop*. (TR 39, 57 emphasis added). Mrs. Thompson did concede that she reported to both Mrs. Holcomb and Mrs. Hamilton. Mrs. Lockwood, on the other hand, stated that she was supervised by only Mrs. Holcomb and no one else. When the undersigned asked her if Mrs. Hamilton supervised her, Mrs. Lockwood responded, "She'll ask me to do things but she will have asked Clara already if I can do it." (TR 285) This type of answering is indicative of Mrs. Lockwood's partisan disposition. It is unlikely that the Employer would place employees Lockwood and Thompson, stationed in an enclosed office without windows, under the sole supervision of shop supervisor Holcomb, who would be unable to view these individuals during the vast majority of the work day. It is also unlikely that Mrs. Hamilton, located in the office directly adjacent to Lockwood and Thompson, and able to view them during much of her work day, interacting with them throughout the day, would not have primary supervisory responsibility over them. Mrs. Hamilton interviewed both Mrs. Lockwood and Mrs. Thompson prior to their hire and, Mrs. Holcomb's work hours do not correspond to those of employees Thompson and Lockwood, though Mrs. Hamilton's do.

The probability that Mrs. Hamilton, rather than Mrs. Holcomb, is the primary supervisor over Lockwood and Thompson is increased by the fact that Mrs. Hamilton conceded that she gave orders to Lockwood and Thompson on a daily basis. Though Mrs. Hamilton stated that she gave these orders on the average of only once per day, this estimation is probably too low. Mrs. Hamilton was obviously trying to disassociate herself with supervisory authority and, Mrs. Thompson conceded that she reported to both Mrs. Holcomb and Mrs. Hamilton. Mrs. Thompson further conceded that she sought authorization from Mrs. Hamilton prior to sending out sample orders, and, Mrs. Hamilton told her what materials to order. Caroline Kobylczak credibly testified that in the more than two years she worked for the Employer, she never saw Clara Holcomb instruct, or assign work to either Mrs. Lockwood or Mrs. Thompson. Though Kobylczak works primarily in the shipping and receiving area, it is likely that, if Mrs. Holcomb were actually actively engaged in the supervision of Lockwood or Thompson, Kobylczak would have observed some incident of Mrs. Holcomb exercising that supervisory authority over them.

Based upon the above, and the testimony in its entirety, it is found that Mrs. Lockwood and Mrs. Thompson were primarily supervised by Mrs. Hamilton and, the shop employees primarily supervised by Mrs. Holcomb. It is also noted that the cutting department employees were supervised by Marilyn Kondash and, working leader Nancy Kayne, though not a supervisory employee, exercised some guidance over the afternoon shift employees.

H. Relationship Between Duties and Production Functions

Contact with customers is solely by Mrs. Hamilton, Mrs. Thompson or Mrs. Lockwood. The crux of Lockwood's and Thompson's job is the handling of customer orders and does not involve any real contact with the production function. The filling of sample orders, (small orders, weighing only a few pounds—regular customer orders generally weigh in excess of forty pounds) is not directly related to the production of the goods. Lockwood and Thompson don't follow the progress of products, add no labor to the product and have no input in the manner or method of production. However, Mrs. Thompson does some work regarding the development of some products and this is indirectly related to the production function. Similarly the inventory and invoicing of products is indirectly related to the production function.

I. Interaction with Other Employees

Testimony by Gloria Stensel, regarding the amount of time she spent working on projects with Mrs. Thompson was confused and conflicting. Based on this apparent confusion and lack of confidence, it is necessary to discredit her testimony to the extent that it is contrary to the credible evidence adduced. About all that can be noted from her testimony is that her interaction with Mrs. Thompson was infrequent as the one estimation she

made of spending 1/2 hours per week, on the average, during the six months preceding the election is most credible. The testimony of Lynda Beth Morgan, that Mary Lockwood average 3 or 4 hours per day in the shipping department and Ilona Thompson average 2 hours per day in the same area, was apparently exaggerated. Though Ms. Morgan generally seem to be a sincere witness, her testimony exceeds Mrs. Thompson's estimate of 4 to 6 hours per week and that she, Mrs. Thompson, spends in that department, and stretches the credible testimony that Mrs. Thompson and Mrs. Lockwood spend 70 to 95% of their time in the office. In any event, Ms. Morgan later noted that, when they are in the department, Mrs. Thompson and Mrs. Lockwood are located about 25 feet away from where Caroline Kobylczak and she were working and about 5 feet from where Cecilia Amman, another employee, was working. She estimated that the amount of time spent actually interacting with shipping and receiving employees averaged about 15 minutes in the aggregate each day. While this estimate is also probably somewhat high, it will suffice to conclude that the amount of time spent interacting with the employees in the shipping and receiving area is minimal.

Linda Typinski credibly testified that Clara Holcomb had pulled shop employees and herself off their machines on occasion to assist in preparation of orders to be shipped but that Mrs. Thompson and Mrs. Lockwood had never participated in this. Caroline Kobylczak testified, without being contradicted, that in August or September, 1982, Lynda Morgan and she were told by Clara Holcomb not to take invoices directly into the office but to route them through Mrs. Holcomb.

Mrs. Thompson and Mrs. Lockwood do not interact with the production employees while filling sample orders and there are only a few of such orders sent each day. Both Lockwood and Thompson asserted that they had brought telephone messages directly to employees. Ilona Thompson estimated that this occurred about every day and Mary Lockwood estimated this occurred about every other day. Linda Typinski and Kathy Morrow tended to contradict this testimony by asserting that it was Clara Holcomb that brought the shop employees telephone messages. As Typinski and Morrow were the more objective witnesses, it is concluded that Mrs. Thompson and Mrs. Lockwood convey telephone messages directly to the production employees infrequently.

Mrs. Thompson and Mrs. Lockwood do not take breaks with the production employees. Both do not each lunch. They have on occasion participated in some employee birthday parties and also attended the Christmas party sponsored and attended by the owners.

Linda Typinski testified that shop employees seldom visit the office and seldom interact with Mrs. Thompson and Mrs. Lockwood. As there is not a great deal of overlap between the functions of Mrs. Lockwood and Mrs. Thompson and those of the production employees, and, Typinski had a generally accurate perception of the facts, and, the totality of the evidence supports this, it is found that Mrs. Lockwood and Mrs. Thompson and the production employees seldom interact.

J. Interchange With Other Employees

No production employee has ever performed either Mrs. Thompson's or Mrs. Lockwood's job. Mrs. Thompson performs Mrs. Lockwood's job when she is not there and vice versa. Neither Mrs. Thompson nor Mrs. Lockwood have ever been placed on a production job. No shop employees has ever transferred into an office job and vice versa. The evidence showed that neither Mrs. Thompson nor Mrs. Lockwood had ever been assigned to sew, tack, attach eyelets, cut or sort leather, or any of the usual production tasks. While Mrs. Lockwood occasionally stamps tags, this function is performed for only one particular account, and performed in her office, as aforementioned in this report, and Mrs. Lockwood is not sent to relieve any production employees on this task. Similarly, though Mrs. Thompson and Mrs. Lockwood have on occasion made entries into the shipping book, as other employees have, they did so in the course of performing their own duties, not in the course of relieving shop employees of their duties.

K. Use of Facility as Compared With Other Employees

Mrs. Thompson and Mrs. Lockwood use all three of the restrooms located at the facility but are not assigned cleaning duties. Shop employees generally use only the restroom in their department and are assigned the duty of cleaning the particular restroom in their department. Mrs. Thompson and Mrs. Lockwood asserted that on occasion they have done some cleaning up in the restrooms on their own initiative, but they were not assigned this work, and, the amount of cleaning that they did was relatively minor. Prior to the election, afternoon shift shop employees were assigned to vacuum the office occupied by Mrs. Lockwood and Mrs. Thompson.

Mrs. Lockwood and Mrs. Thompson keep their purses next to their desks and there is a coat rack located in the office. Shop employees generally keep their purses next to their machines and there is a coat rack located in the shop. All employees, including Mrs. Thompson and Mrs. Lockwood, park in the same parking area. Mrs. Thompson has a key to the shop as does Nancy Kayne, a working leader. On occasion, Mrs. Thompson has borrowed Mrs. Hamilton's car (registered in the name of the Hamiltons' other corporation) and Mrs. Hamilton has also lent the vehicle to Supervisor Holcomb and a few other employees. Mrs. Thompson and Mrs. Lockwood have access to the employee personnel files maintained in their office but these files contain only W-4 forms and other tax related records.

L. Comparison of Working Conditions

Production day shift employees are assigned regular work hours beginning at 7:00 AM in the morning and ending at 3:30 PM. Breaks are given from 9:15 AM to 9:30 AM and 1:30 PM to 1:45 PM. Lunch is from 11:30 AM until noon. A few employees worked the afternoon shift and followed a similar regimen. Shop employees are required to punch in and out at the beginning and end of their shift and at breaks and lunch. A time card rack is kept in the shop near the time clock. In contrast, Mrs.

Thompson and Mrs. Lockwood operated on a quasi flex-time system. Neither had any regular schedule of hours and no set time to take breaks or lunch. Neither was required to punch a time card. Mrs. Lockwood testified that she kept a time card in her purse and filled it out by hand. Mrs. Thompson stated that she wrote out her hours on a blank time card. It was clear that the Employer did not oversee the making of these entries. Kathy Morrow testified, without contradiction, that on one occasion Mrs. Thompson apparently authorized a departure from routine punching on her time card. Mrs. Thompson stated that she arrived at work between 7:00 AM and 9:00 AM. Mrs. Lockwood generally arrives at work at about 9:00 AM. She initially testified that she arrives at work at 10:00 AM about one percent of the time (further stating, "once in a while . . .", "occasionally . . .") and then corrected this, upon further examination, to once per week.

During testimony on Mrs. Lockwood's working hours, Mrs. Lockwood was asked if she worked the same hours every day and responded, "It varies. I work just like everyone else in the shop." (TR 194) However, the testimony was clear that the employees in the shop did not have varying hours like hers. This is another example, and others may be found throughout the entire line of questioning just on this particular topic (TR 195-197), of apparent attempts to tailor testimony to avoid responses that might be contrary to the Employer's position.

As previously mentioned, shop employees are assigned to clean restrooms and Mrs. Thompson and Mrs. Lockwood are not. Mrs. Thompson and Mrs. Lockwood benefit from the air conditioning in Mrs. Hamilton's office and are free to make up time lost from work due to illness or personal problems. Some shop employees are also permitted to make up time lost from work in the same manner. Caroline Kobylczak and other employees testified credibly that Mrs. Lockwood and Mrs. Thompson wore dress clothes (Mrs. Thompson stated that occasionally she wore a skirt) to work on a regular basis, whereas shop employees generally wore more casual clothes, such as jeans and so forth, as the nature of shop work caused their clothes to get dirtier.

M. Pay, Method of Compensation and Benefits

During the relevant period, Mrs. Thompson was paid \$6.75/hour and Mrs. Lockwood was paid \$4.00/hour. During that same time period, 9 of the shop employees were paid \$3.45/hour, 5 were paid \$3.55/hour, 2 were paid \$3.65/hour, 1 was paid \$3.70/hour, 2 were paid \$3.50/hour, 1 was paid \$4.00/hour, 1 was paid \$5.00/hour and 1 was paid \$5.65/hour. A few of these rates include night shift premium. The median pay was \$3.55/hour. No employees were salaried and there were no bonuses nor fringe benefits. The Employer maintained one payroll list for all employees, and the computerized payroll was processed at the Ferndale facility. Shop employees retrieved their paychecks from the time card rack at the end of the day. Mrs. Thompson and Mrs. Lockwood were handed theirs.

N. Background, Education and Training

Mrs. Thompson and Mrs. Lockwood are high school graduates, an educational level comparable to that of shop employees. They have no specialized training background. Mrs. Thompson was previously employed as an office clerical employee and Mrs. Lockwood was previously employed in a production job, and, as a medical assistant. Mrs. Lockwood applied for her position in response to a newspaper ad for office and shop work.

III. ANALYSIS

In examining whether employees should be included in a production and maintenance unit versus an office clerical unit, the Board considers community of interest. In *Martin Outdoor Advertising Company*, 198 NLRB 1136, 1137 (1972), the Board found an employee to be a plant clerical where she occupied a plant storage building physically separated from the office clerical building, had daily contact with unit employees, distributed work orders to their departments, assisted unit employees in filing out administrative forms and reimbursed unit employees for out of pocket expenses.¹ In *Jacob Ash Co., Inc.*, 224 NLRB 74 (1976), three clerical employees were included in a warehouse unit where they worked in an open office area on the first floor of a warehouse, clerical employees and warehousemen resolved questions regarding customer invoices, shared common supervision, there was some job interchange (one of the clericals had prepared light orders for customers walking into the Employers warehouse), there was regular contact between the clericals and the warehousemen, and 2 of the 3 clericals enjoyed a higher rate of pay than the warehousemen.

Administrative Law Judge Reis, in *Gordonville Industries, Inc.*, 252 NLRB 563, 590 (1980), pointed out, in his affirmed decision, that the determination as to whether an employee is an office clerical employee rather than a plant clerical employee is "occasionally as much visceral as cerebral." Judge Reis noted that "Normally, plant clericals spend all or most of their time working in the plant production area. Normally, they are involved in the production process itself. For example, an employee who worked in the production area requisitioning parts needed by production employees is a plant clerical; an employee who fills out forms in the billing department located in the administrative offices is an office clerical . . ." (*id.* at 591). The decision noted that the fact that clerical employees exercised secretarial skills does not prevent finding them to be plant clerical employees. In that case, employees were found to be plant clericals as they worked in the production area, contributed directly and meaningfully to the production process, were commonly supervised and enjoyed similar working condi-

tions. Along the same vein, in *American Party System, Inc.*, 254 NLRB 901 (1981), the Board found that operations-center employees had a sufficient community of interest to be included with warehouse employees where they shared substantially similar supervision, were in constant visual and frequent verbal contact with warehouse employees with whom they exchanged information, handled the same form essential to their job functions, experienced job interchange, took breaks together, all punched time clocks and had common wages and benefits.

In contrast, in situations where office clericals enjoyed differing working conditions, they have been excluded from the main unit. *Winn-Dixie Stores, Inc.*, 153 NLRB 273 (1965). The Board has found that invoice clerks, isolated from and having no contact with warehouse employees were essentially office clerical employees. *Famous-Barr Company*, 153 NLRB 341, 344-345 (1965). In *Arthur F. Derse Sr.*, 173 NLRB 214, 219 (1968), the Board affirmed the Administrative Law Judge's finding that 5 employees shared closer community of interest with excluded office clerical employees. The following factors, *inter alia*, were noted: no working contact existed between the 5 employees and the production and maintenance employees; common supervision was lacking; working conditions were dissimilar; skills and functions differed; and, their work was not directly integrated with the production process.

Few cases are as clear cut as the last three cited. In most situations, the overall duties performed by the disputed employees fall into a gray area between office and plant clerical. In *Conchemco Inc.*, 182 NLRB 125 (1970) the Board found that an employee, alleged to be a plant clerical was an office clerical employee where she worked adjacent to the general office where office clerical employees were located, apart from the production area, was separately supervised, maintained the inventory of all raw materials used in the manufacturing process, seldom went into the plant, received the same fringe benefits as production employees, including overtime pay, worked different hours, performed different duties and had little or no contact with the production employees. Similarly, in *Case Inc.*, 237 NLRB 798, 806 (1978), the Administrative Law Judge, affirmed by the Board, found two employees to be office clericals rather than plant clericals where one employee prepared job progress tickets on the basis of orders received from contractors and distributed these tickets to employees. She kept records of how much material the Employer received, how much was used in the plant, and recorded components produced. Her contact with production employees was limited to recording the number of hours worked by employees from the timeclock, the number of pieces produced by each employee, delivering messages to employees and passing out insurance papers or other personnel-related documents. Somewhat akin to *Case Inc.*, and *Conchemco*, the Board found, in *Prince Gardner, Division of Swank, Inc.*, 231 NLRB 96 (1977), that payroll clerks were not properly within a production and maintenance unit but were more appropriately placed in an office clerical unit where their interests in efficient earnings report-

¹ In that case, the Employer maintained a separate office clerical building whereas in the instant matter, the Employer herein has its main office clerical functions conducted at its only facility in Pontiac, Michigan. The separate business entity referred to as the Ferndale office fulfilled functions primarily related bookkeeping and computerized payroll matters, functions companies often contract out to independent companies. However, the primary customer contact and processing of customer orders is handled at the Pontiac facility by Mrs. Thompson and Mrs. Lockwood.

ing might come into conflict with the interest of the production employees. In that case, a work in process clerk was also placed in the office clerical unit though she spent 50% of her time at a centrally located desk in the production area tracking down orders and collecting progress data. The employee had pay, benefits and insurance similar to office employees but did not provide any service to the production process.

Individual cases may be pointed to which show that the Board has found employees to be office clerical or plant clericals despite the existence or non-existence of one or more of the numerous factors involved herein. No one case reviewed above falls squarely on point, though. The Board set forth the community of interest standard in *F. & M. Schaefer Brewing Co.*, 198 NLRB 323, 326, stating, "Clerical employees may be included in a unit of production and maintenance employees where they enjoy interest and working conditions similar to those production and maintenance employees." Applying this standard to the instant facts, it must be concluded that the working conditions and interests of Mrs. Thompson and Mrs. Lockwood are very different from those of the production and maintenance employees. The production and maintenance employees are engaged in a manufacturing operations characterized by physical labor and movement. The disputed employees generally are located within an office area, performing paperwork functions not directly related to the production process. They do not contribute directly to the production process, have different supervision, seldom interact with and never interchange with, the production and maintenance employees, and, though a few of their working conditions are somewhat similar, the majority of their working conditions are substantially different.

IV. CONCLUSION AND RECOMMENDATION

It is concluded that Mrs. Thompson and Mrs. Lockwood were essentially office clerical employees and should be excluded from the production and maintenance unit. Accordingly, the undersigned recommends that the challenges to their ballots be sustained.

Based upon this conclusion and the aforementioned agreement² of the parties, it is recommended that the challenges to the ballots of Marilyn Kondash, Virginia Thomas, Christina Edwards, Martha Van Wagner, Mary Johnson, Bonita Porter, Janice Flagg, Ilona Thompson and Mary Lockwood be sustained. The Petitioner agreed, in accord with the Employer, that the challenge to the ballot of Nancy Kayne should be withdrawn, and the ballot opened and counted. However, this is unnecessary as the sustaining of the above nine challenges makes the ballot of Nancy Kayne non-determinative of the outcome of the election. Accordingly, it is recommended that the Board issue the following revised Tally of Ballots:

Approximate number of eligible voters—24
Void Ballots—0
Votes cast for Petitioner—13
Votes cast against participating labor organization—10
Valid votes counted—23
Challenged ballots—1
Valid votes counted plus challenged ballots—24

It is further recommended that the Board issue a Certification of Representative reflecting that the Petitioner is the exclusive collective-bargaining representative of the employees in the unit described hereinabove.

² No evidence was adduced at the hearing which indicated that the agreement of the parties regarding certain challenges, as set forth earlier in this Report, should not be honored.